

SUMMONS (CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE TO DEFENDANT:

(AVISO AL DEMANDADO):

CALIFORNIA DEPARTMENT OF TOXIC SUBSTANCES CONTROL; MEREDITH WILLIAMS, in her capacity as Acting Director of the Department of Toxic Substances Control; and DOES 1 through 100, inclusive

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

WEST COAST CHAPTER, INSTITUTE OF SCRAP RECYCLING INDUSTRIES, INC.;
SEE ATTACHMENT A FOR ADDITIONAL PLAINTIFFS

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no pueda pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, pueda perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es): Superior Court of California
County of Sacramento - Gordon D. Schaber Sacramento County Courthouse
720 9th Street, Sacramento, CA 95814

CASE NUMBER: (Número del Caso):

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is: (El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es): Pillsbury Winthrop Shaw Pittman LLP
Margaret Rosegay #96963, Four Embarcadero Center, 22 Fl., San Francisco, CA 94111; (415) 983-1000

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DATE: NOV 26 2019
(Fecha)

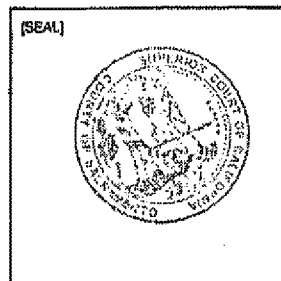
Clerk, by
(Secretario)

S. KHORN

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010).)



NOTICE TO THE PERSON SERVED: You are served

1. ☒ as an individual defendant.

2. ☒ as the person sued under the fictitious name of (specify): in her capacity as Acting Director of the Department of Toxic Substances Control

3. ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation)

☐ CCP 416.20 (defunct corporation)

☐ CCP 416.40 (association or partnership)

☐ other (specify):

4. ☐ by personal delivery on (date)

☐ CCP 416.60 (minor)

☐ CCP 416.70 (conservatee)

☐ CCP 416.90 (authorized person)

SHORT TITLE:

West Coast Chapter, et al. v. CA Dept of Toxic Substances Control

CASE NUMBER:

ATTACHMENT (Number): A

(This Attachment may be used with any Judicial Council form.)

LIST OF ADDITIONAL PLAINTIFFS:

ECOLOGY RECYCLING SERVICES, LLC; SA RECYCLING, LLC; SCHNITZER STEEL INDUSTRIES, INC.; and SIMS GROUP USA CORPORATION

(If the item that this Attachment concerns is made under penalty of perjury, all statements in this Attachment are made under penalty of perjury.)

Page 1 of 1

(Add pages as required)

By Fax

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16 WEST COAST CHAPTER, INSTITUTE OF SCRAP RECYCLING INDUSTRIES, INC.;
17 ECOLOGY RECYCLING SERVICES, LLC; SA RECYCLING, LLC;
18 SCHNITZER STEEL INDUSTRIES, INC.; SIMS GROUP USA CORPORATION
19

20 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

21 **IN AND FOR THE COUNTY OF SACRAMENTO**

22 WEST COAST CHAPTER, INSTITUTE OF)
23 SCRAP RECYCLING INDUSTRIES, INC.;)
24 ECOLOGY RECYCLING SERVICES, LLC;)
25 SA RECYCLING, LLC; SCHNITZER)
26 STEEL INDUSTRIES, INC.; and SIMS)
27 GROUP USA CORPORATION,)

28 Plaintiffs,

vs.

29 CALIFORNIA DEPARTMENT OF TOXIC)
30 SUBSTANCES CONTROL; MEREDITH)
31 WILLIAMS, in her capacity as Acting)
32 Director of the Department of Toxic)
33 Substances Control; and DOES 1 through)
34 100, inclusive,)

Defendants.

CASE NO.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

[Code Civ. Proc., §§ 526, 1060; Hazardous
Waste Control Law, Health & Saf. Code, Div.
20, Chapter 6.5]

FILED

**Superior Court Of California,
Sacramento**

11/26/2019

slhorn1

By _____, Deputy

Case Number:

34-2019-00269900

INTRODUCTION

1. Plaintiffs seek a declaration that the Hazardous Waste Control Law (Health & Saf. Code, §§ 25100, *et seq.*) ("HWCL") does not authorize the California Department of Toxic Substances Control ("Defendant" or "DTSC")¹ to require Plaintiffs to obtain hazardous waste treatment facility permits for metal processing operations conducted at metal shredding facilities in California, or to regulate such metal processing operations as hazardous waste management activity. As used in this Complaint, "metal processing operations" refers to (i) the reduction in size of scrap metal through the use of an electric hammermill or other shredding device ("shredding"); (ii) the subsequent separation, sorting and removal of ferrous and non-ferrous metal commodities from the shredded material exiting the hammermill or shredding device; and (iii) the related receipt, stockpiling and handling of raw material feedstocks, intermediates and finished metal products. None of these operations falls within the scope of Defendant's jurisdiction under the HWCL.²

2. For the first time in over 35 years, Defendant has embarked on a plan to regulate metal processing operations as "treatment" of "hazardous waste" contrary to applicable laws, regulations and long-standing DTSC policy and practice. Under its so-called "Path Forward," DTSC seeks to accomplish this wholesale reversal of position and to impose a new regulatory regime on Plaintiffs, without the benefit of any authorizing legislation and without complying with the rulemaking requirements of the Administrative Procedure Act. If Defendant's plan is allowed to come to fruition, it will result in the loss of significant scrap metal recycling capacity in the state, causing enormous disruption in an industry that provides critical infrastructural services to Californians and unlawfully interfering with and impairing Plaintiffs' legitimate business operations. Therefore, Plaintiffs ask the Court to disallow the imposition of unlawful hazardous waste treatment permit requirements and related regulatory controls on metal

¹ All references to "Defendant" or "DTSC" include Meredith Williams, Acting DTSC Director.

² As discussed elsewhere in the Complaint, Plaintiffs do not contest Defendant's authority to regulate metal shredder residue, the waste that remains after completion of all metal processing operations.

1 processing operations, which are contrary to the provisions of the HWCL and in violation of
2 Plaintiffs' rights to due process of law.

3 3. Plaintiff West Coast Chapter is a local chapter of the Institute of Scrap Recycling
4 Industries, Inc. ("ISRI"), a national, not-for-profit trade association that represents over 1,000
5 recycling companies nationwide engaged in the handling, processing, shipping and recycling of
6 valuable scrap metal commodities. Plaintiffs Ecology Recycling Services, LLC ("Ecology"), SA
7 Recycling, LLC ("SA Recycling"), Schnitzer Steel Industries, Inc. ("Schnitzer Steel") and Sims
8 Group USA Corporation ("Sims") (collectively, "Plaintiffs") are each members of the West Coast
9 Chapter of ISRI.

10 4. Ecology, SA Recycling, Schnitzer Steel and Sims each own and operate metal
11 shredding and processing facilities in California that recycle valuable ferrous and non-ferrous
12 metals from the vast quantities of scrap metal generated by California residents and businesses on
13 a day-in, day-out basis. Plaintiffs' facilities represent the bulk of the state's scrap metal
14 processing capacity and are essential to the safe and environmentally responsible recycling of
15 literally millions of end-of-life vehicles, household appliances and other metal-containing items.

16 5. By law, scrap metal cannot be disposed of in California landfills and must
17 therefore be recycled.³ In the absence of a viable metal recycling industry in the state, the
18 negative consequences to the environment would be legion. The 1.5 million or more cars that
19 reach the end of their useful lives each year in California would have to be transported hundreds
20 of miles to neighboring states to be recycled or be shipped out of the country. Transport of these
21 vehicles would place thousands of additional trucks on the highways every year, increasing the
22 risk of accidents, fossil fuel usage, greenhouse gas and diesel particulate emissions, and
23 costs/inconvenience to the consumer. It is inevitable that vehicles would be abandoned in alleys,
24 yards, vacant lots, or along roadsides or improperly and dangerously loaded into shipping
25 containers and sent overseas with myriad unintended consequences. With the loss of available
26 recycling outlets, routine collection and recycling of household appliances and other forms of

27 ³ Pub. Res. Code, §§ 42160, *et seq.*

1 "light iron" would also be disrupted,⁴ causing these materials to accumulate in huge quantities,
2 creating urban and rural blight and potential threats to human health, safety and the environment.
3 Local governments would face increased costs in order to address these risks and burdens.
4 Defendant's *ultra vires* actions threaten the economic viability of this critical industry, to the
5 significant detriment of Plaintiffs and all Californians, including the thousands of people who
6 make their livelihoods in this industry.

7 6. Plaintiffs (or their predecessors) have operated metal shredding and recycling
8 facilities under a regulatory framework that has been in place in California since the mid-1980's.
9 Under this framework, and consistent with the HWCL, the Department's authority has been
10 limited to regulation of metal shredder residue ("MSR"), the waste that remains after all ferrous
11 and non-ferrous metal processing operations have been completed.⁵ This long-standing
12 regulatory framework is based on three fundamental principles: (1) DTSC has no jurisdiction
13 under the HWCL over materials that are not "wastes;" (2) DTSC's recognition of and adherence
14 to the scrap metal exemption contained in the state hazardous waste regulations and the
15 application of that exemption during metal processing and recycling operations (see, 22 CCR,
16 §§ 66260.10; 66261.6(a)(3)(B)); and (3) DTSC's own formal determination that the materials
17 being processed by metal shredding facilities are not subject to regulation under the HWCL until
18 after they have been "exhausted," *i.e.*, after all ferrous and non-ferrous metals that can be
19 removed have been removed from the material produced by the shredder. DTSC Official
20 Policy/Procedure #88-6, Auto Shredder Waste Policy and Procedures (Nov. 1988). OPP #88-6 is
21
22

23 ⁴ "Light iron" is an industry term that applies to the myriad lighter forms of scrap metal that are
24 processed by metal shredders.

25 ⁵ Plaintiffs also do not contest Defendant's authority to exercise enforcement authority over other
26 materials that may escape from metal processing operations and, as a practical matter, are
27 "abandoned." The fact that Defendant may take enforcement action in response to alleged
28 unlawful disposal of hazardous waste at a metal shredding facility does not mean that
Defendant may lawfully require hazardous waste treatment permits for metal processing
operations.

1 declarative of existing law and cannot be ignored or rescinded except in compliance with law.⁶
2 These principles, together with the administrative classification of treated metal shredder residue
3 as a nonhazardous waste,⁷ have sustained the industry over the past 35-plus years and have
4 allowed metal shredding facilities to beneficially recycle over a hundred million tons of metal in
5 an economically sustainable manner.

6 7. DTSC is now set to launch a wholly new, vastly expanded and costly regulatory
7 regime on Plaintiffs' facilities without any authority under HWCL or its implementing
8 regulations in Title 22 of the California Code of Regulations. Defendant contends, without any
9 legal basis, that DTSC has always had jurisdiction over Plaintiffs' metal processing operations
10 under existing law and that DTSC may require Plaintiffs to apply for and obtain hazardous waste
11 treatment permits for such metal processing operations without need for any change in the law or
12 other due process.

13 8. Defendant's unilateral "repeal" of the existing regulatory framework, and
14 imposition of new "underground" permit and related requirements on metal processing
15 operations, is unlawful. Defendant has offered no valid legal authority to support this new
16 regulatory regime and has failed to proceed according to law.

17 ⁶ Plaintiffs assert that Defendant's actions violate the Administrative Procedure Act, the
18 California Environmental Quality Act, and various other provisions of law. Consistent with the
19 California Code of Civil Procedure and judicial decisions applicable to splitting causes of
20 action, Plaintiffs expressly reserve these and all other potential claims against Defendant arising
21 out of its unlawful attempt to regulate metal processing operations. At this juncture, Plaintiffs
22 are only seeking a determination by the Court that DTSC has no authority under the HWCL to
23 require Plaintiffs to obtain hazardous waste treatment permits for their metal processing
24 operations or to subject such operations to the hazardous waste management regulations.

25 ⁷ Plaintiffs' claims relating to DTSC's separate but related proposed revisions to the regulatory
26 status of treated metal shredder residue are not yet ripe, as DTSC has stated it intends to address
27 this issue through formal rulemaking. To date, Defendant has published a "discussion draft" of
28 the regulations but has not issued proposed regulations as required by the Administrative
Procedure Act. Significantly, Defendant's discussion draft regulations relating to treated
residue would condition the contemplated exclusion on the metal shredding facility's receipt of
a permit or other form of authorization from DTSC for its metal processing operations. See,
discussion draft, 22 CCR § 66261.4(i)(1) at [https://dtsc.ca.gov/wp-
content/uploads/sites/31/2018/07/Text-Conditional-Exclusion-for-CTMSR_5-17-18.pdf](https://dtsc.ca.gov/wp-content/uploads/sites/31/2018/07/Text-Conditional-Exclusion-for-CTMSR_5-17-18.pdf).
Plaintiffs have objected to Defendant's back-door attempt to impose this unlawful permit
requirement on their metal processing operations. Plaintiffs hereby reserve all claims and
defenses relating to any final agency action that addresses the current status of treated metal
shredder residue or imposes other requirements on Plaintiffs' metal processing operations.

1 9. Defendant has ignored the significant adverse environmental and economic effects
2 and other unintended consequences that will result from the imposition of this unlawful
3 regulatory regime on Plaintiffs' facilities, as well as the irreparable harm that will be suffered by
4 Plaintiffs and the many thousands of businesses and individuals (including householders) who
5 depend on the essential services provided by Plaintiffs.

6 10. Plaintiffs seek a judicial declaration that DTSC does not have authority to require
7 Plaintiffs to obtain hazardous waste treatment permits for their metal processing operations or to
8 otherwise regulate those operations as hazardous waste management activity. Metal processing
9 operations are conducted for the purpose of separating and removing valuable ferrous and non-
10 ferrous metals from exempt scrap metal and do not involve any form of waste management.
11 DTSC's jurisdiction under the hazardous waste permitting program is limited to facilities that
12 treat, store or dispose of hazardous waste and does not extend to Plaintiffs' metal processing
13 operations that do not involve treatment, storage or disposal of hazardous waste. For avoidance
14 of doubt, Plaintiffs also seek a judicial declaration that DTSC does not have jurisdiction over the
15 feedstocks utilized by Plaintiffs in their operations, or over any intermediate or final metal
16 products handled or produced by Plaintiffs' operations.

17 11. Plaintiffs also seek an injunction to prevent DTSC from requiring Plaintiffs to
18 apply for hazardous waste treatment permits and to bar DTSC from taking enforcement action of
19 any kind against Plaintiffs which action is predicated upon or presumes that Plaintiffs' metal
20 processing operations are subject to hazardous waste treatment permit requirements. An
21 injunction is needed to avoid the irreparable harm that would result if Plaintiffs' metal processing
22 operations were unlawfully reclassified as hazardous waste treatment operations.

23 **JURISDICTION AND VENUE**

24 12. This Court has jurisdiction over the matters alleged in this complaint pursuant to
25 the California Constitution, Article VI, § 10, Code of Civil Procedure §§ 88, 526 and 1060.

26 13. Venue in this Court is proper under Code of Civil Procedure § 393(b) because both
27 Defendant and the Attorney General maintain offices in Sacramento.

1 PARTIES

2 14. Plaintiff West Coast Chapter is a local chapter of ISRI, a members-based national
3 trade association representing over 1,000 companies engaged in the handling, processing,
4 shipping and recycling of valuable scrap metal commodities. ISRI members pay dues and are
5 actively involved in the activities of the association, including this action. Ecology, SA
6 Recycling, Schnitzer Steel and Sims are each members of the West Coast Chapter.

7 15. Plaintiff Ecology is a privately-owned limited liability company organized under
8 the laws of the state of California and registered to do business in California. Ecology owns and
9 operates a metal shredding and recycling facility in Colton, California, and is engaged in, and
10 intends to continue to engage in, the lawful operation of the facility.

11 16. Plaintiff SA Recycling is a privately-owned limited liability company organized
12 under the laws of the state of Delaware and registered to do business in California. SA Recycling
13 owns and operates metal shredding and recycling facilities in Los Angeles (Terminal Island),
14 Anaheim, and Bakersfield, California, and is engaged in, and intends to continue to engage in, the
15 lawful operation of these facilities.

16 17. Plaintiff Schnitzer Steel is a publicly traded company organized under the laws of
17 the state of Oregon and registered to do business in California. Schnitzer Steel owns and operates
18 a metal shredding and recycling facility in Oakland, California, and is engaged in, and intends to
19 continue to engage in, the lawful operation of the facility.

20 18. Plaintiff Sims d/b/a Sims Metal Management is a subsidiary of a publicly traded
21 company, and is organized under the laws of the state of Delaware and registered to do business
22 in California. Sims owns and operates a metal shredding and recycling facility in Redwood City,
23 California, and is engaged in, and intends to continue to engage in, the lawful operation of the
24 facility.

25 19. Defendant DTSC is an agency of the State of California, organized and existing
26 under and pursuant to Health and Safety Code, section 58000 *et seq.* DTSC is authorized to
27 administer and enforce California's Hazardous Waste Control Law (Health & Saf. Code, §§ 5100
28

1 *et seq.*) and its implementing regulations (22 CCR, §§ 66260.1 *et seq.*) ("Title 22") but may not
2 do so in an unlawful manner.

3 20. Defendant Meredith Williams is sued in her official capacity as the Acting
4 Director of the Department of Toxic Substances Control. The Director serves as the chief
5 executive of DTSC and is ultimately responsible for the decisions made by DTSC concerning its
6 implementation of applicable laws and regulations. Ms. Williams was selected to serve as Acting
7 Director of DTSC by the California Secretary of Environmental Protection on January 9, 2019.

8 21. DOES 1 through 100, inclusive are the partners, agents, employees or principals of
9 the named Defendants and other State agencies, and of each other whose true names and
10 capacities are currently unknown to Plaintiffs; the named defendants and DOES 1 through 100,
11 inclusive, performed the acts and conduct herein alleged, aided and abetted the performance
12 thereof, or knowingly acquiesced in, ratified, and accepted the benefits of such acts and conduct;
13 and therefore, DOES 1 through 100, inclusive, are liable to Plaintiffs to the extent of the liability
14 of the named Defendants. Plaintiffs will seek leave of the Court to amend its Complaint to reflect
15 the true names and capacities of the Defendants designated herein as DOES when such identities
16 and capacities become known.

17 22. Plaintiffs are informed and believe, and on that basis allege, that at all times
18 mentioned herein, each and every Defendant was acting as an agent and/or employee of each of
19 the other Defendants, and at all relevant times mentioned was acting within the course and scope
20 of said agency and/or employment with the full knowledge, permission, and consent of each of
21 the other Defendants. In addition, each of the acts and/or omissions of each Defendant alleged
22 herein were made known to, and ratified by, each of the other Defendants.

23 **STANDING**

24 23. ISRI is a members-based national trade association that is actively engaged with
25 federal and state legislative and regulatory matters affecting the scrap metal recycling industry.
26 ISRI's members, including the individual Plaintiffs in this action, are engaged in the handling,
27 processing, shipping, and sale of valuable recycled scrap metal commodities to customers around

1 the world. ISRI comments extensively on matters affecting the regulatory status of scrap metal
2 processing operations and was instrumental in the adoption of a federal regulation excluding all
3 processed scrap metal from the federal definition of "solid waste" under the Resource
4 Conservation and Recovery Act, 49 USC §§ 6901, *et seq.* ("RCRA"), the federal counterpart to
5 the definition of "waste" under the HWCL.⁸ Through its advocacy efforts, and in order to
6 promote commerce in recycled scrap metal, ISRI seeks to maintain consistency among federal
7 and state laws affecting scrap metal operations. ISRI, through its West Coast Chapter, has
8 associational standing to represent the interests of its members in this action because ISRI's
9 members would otherwise have standing to sue in their own right; the interest ISRI seeks to
10 protect in filing this lawsuit are germane to ISRI's purpose; and neither the declaratory nor
11 injunctive relief sought herein would necessarily require the participation of individual members
12 in the lawsuit. Individual Plaintiffs Ecology, SA Recycling, Schnitzer Steel and Sims are
13 members of ISRI.

14 24. Individual Plaintiffs each own and operate metal shredding and processing
15 facilities in California, and are engaged in related activities associated with the purchase,
16 collection, sorting, transportation, and recycling of end-of-life vehicles, household appliances and
17 other forms of scrap metal. Imposition of Defendant's new, unlawful regulatory regime on
18 Plaintiffs' facilities would significantly disrupt their metal shredding and processing operations,
19 increase operating costs to the point their operations would be rendered uneconomical, cause
20 some or all of the facilities to be non-conforming land uses, and effectively foreclose safe and
21 cost-effective means of recycling the vast quantities of scrap metal generated in California on a
22 daily basis. Further, Defendant's actions will stigmatize a legitimate industrial activity and
23 impede the sale of valuable metals by characterizing them as the products of a hazardous waste
24 treatment process.

25 25. In October 2019 Defendant initiated an enforcement action against Plaintiff SA
26 Recycling, through issuance of a draft Corrective Action Consent Agreement ("CACA"). The

27
28 ⁸ Sec. 40 CFR § 261.4(a)(13).

1 CACA describes SA's metal shredding facility on Terminal Island as a "hazardous waste facility"
2 and alleges that SA has treated, stored and/or disposed of hazardous waste without a permit or
3 other form of authorization from the Department since 1962. The CACA imposes a number of
4 obligations on SA Recycling that are applicable only to hazardous waste facilities. See,
5 Paragraph 27 below. Plaintiffs Ecology, Schnitzer Steel and Sims are informed and believe, and
6 on that basis allege, that Defendant can be expected to initiate comparable enforcement actions
7 against them as well. Plaintiffs would be adversely and directly affected, and irreparably injured,
8 if the Court does not grant the relief sought by Plaintiffs in this action. As a result of Defendant's
9 actions complained of herein, each individual Plaintiff has standing to sue.

10 RIPENESS

11 26. This action is ripe for judicial review. Defendant has stated in writing, including
12 (i) in formal enforcement documents and related official correspondence, (ii) in a written draft
13 report prepared pursuant to Health and Safety Code, section 25150.82, and (iii) in numerous
14 regulatory development documents posted on DTSC's website, that scrap metal shredding
15 facilities, including scrap metal processing operations conducted by such facilities, are hazardous
16 waste treatment facilities within the Department's jurisdiction. Defendant further contends it may
17 regulate Plaintiffs' raw material and finished product stockpiles through the imposition of
18 conditions in such hazardous waste treatment permits. Plaintiffs anticipate they could be required
19 to submit applications for hazardous waste treatment permits at any time, and/or be served with
20 unilateral enforcement orders ordering them to comply with the HWCL and implementing
21 regulations, as applied to their metal processing operations.

22 27. Evidence of this concern is reflected in the October 28, 2019 draft CACA issued
23 by Defendant to Plaintiff SA Recycling (see Paragraph 25 above), which claims that SA's metal
24 shredding facility on Terminal Island has been operating as a "hazardous waste facility" *since*
25 *1962*, ten years prior to the enactment of the earliest version of the HWCL. The CACA identifies
26 all of the primary metal processing areas and equipment at the facility as "solid waste
27 management units" ("SWMUs") and outlines comprehensive remedial investigation and cleanup

(corrective action) requirements which Defendant asserts are applicable to each SWMU. Defendant asserts that "[j]urisdiction exists pursuant to Health and Safety Code, sections 25187 and 25200.14, which authorize DTSC to issue an order to require corrective action when DTSC determines that "there is or may be a release of hazardous waste or hazardous constituents into the environment from a hazardous waste facility." None of SA Recycling's metal shredding facilities, including the Terminal Island Facility, is a "hazardous waste facility," and the facility-wide corrective action requirements imposed in the CACA have no application to Plaintiff's metal processing operations.⁹ SA Recycling expects that comparable actions will be taken against its metal shredding facilities in Bakersfield and Anaheim.

28. Plaintiffs Ecology, Schnitzer Steel and Sims are informed and believe, and on that basis allege, that Defendant is likely to issue comparable draft CACAs to their metal shredding facilities.¹⁰ All Plaintiffs are informed and believe, and on that basis allege, that Defendant is likely issue unilateral enforcement orders to any facility that refuses to enter voluntarily into a CACA.

29. Defendant maintains (incorrectly) that it is not required to obtain new statutory authority or engage in formal rulemaking in order to establish that the materials undergoing scrap metal processing are subject to regulation as "hazardous waste" or that scrap metal processing operations constitute "treatment" of hazardous waste subject to DTSC's permit requirements. Defendant's position is belied by the fact that it has never before required Plaintiffs to obtain hazardous waste treatment permits for metal processing operations, and indeed its official policy, which is declarative of existing law, specifies to the contrary.

30. DTSC's articulation of its "Path Forward" requiring Plaintiffs to apply for hazardous waste treatment facility permits for their metal processing operations, and its assertion

⁹ Plaintiffs do not dispute Defendant's right to exercise its enforcement authority under Health and Safety Code section 25187 in response to a violation of the HWCL or implementing regulations. However, this authority cannot be used to impose permit or permit-dependent requirements on Plaintiffs' operations that go beyond the scope of the law.

¹⁰ Defendant has issued a draft CACA to one of Plaintiffs' feeder yards in Fresno, where shredder feedstock is collected before being transported to the metal shredding facility. Feeder yards are not hazardous waste facilities.

1 that this new regulatory regime may lawfully be imposed on Plaintiffs without need for any
2 additional statutory or regulatory authority, constitute "final agency action" that is subject to
3 judicial review. Plaintiffs seek to avert this unlawful assertion of authority over their operations
4 and should not be required to wait until DTSC specifies a date by which permit applications must
5 be submitted or issues unilateral enforcement orders to Plaintiffs for operating hazardous waste
6 treatment facilities without a permit or other form of authorization from the Department.

7 FACTUAL BACKGROUND

8 Overview of the Metal Shredding Industry

9 31. Every year, the state of California generates over 1.5 million end-of life vehicles
10 and millions of tons of other types of scrap metal. All of this material is valuable and serves as
11 raw material for the manufacture of new metal products. Scrap metal exists in an extraordinary
12 variety of forms, ranging from cars, buses, railcars, trailers, metal shipping containers, metal
13 turnings and stampings from metal fabrication operations, large and small household appliances,
14 used process equipment and machinery, steel girders and beams, metal furniture, water heaters,
15 pipes and plumbing fixtures, metal siding, bicycles, old tools, chain link fencing, roofing and
16 building materials, wire, and many thousands of other items.

17 32. Current California law (Pub. Res. Code, §§ 42160, *et seq.*) prohibits the disposal
18 of recyclable scrap metal in California landfills, necessitating that the state support a viable scrap
19 metal recycling industry to process these ubiquitous, valuable materials.

20 33. Metal shredding and recycling facilities process an endless flow of scrap metal
21 using a variety of different processing operations, including metal shredding and metal
22 separation/removal processes. The shredding process reduces scrap metal to a size and form from
23 which ferrous and non-ferrous metals can be separated and removed from accompanying non-
24 metallic materials. Upon completion of processing, the metals are sold as commodities on the
25 open market and are used in the manufacture of steel and various metal alloys. Collectively,
26 Plaintiffs' facilities shred over two million tons of scrap metal on an annual basis, yielding over a
27 million tons of ferrous and non-ferrous metals from their metal processing operations.

1 34. Plaintiffs purchase the scrap metal that is processed by their facilities; these raw
2 materials are not available "for free." The metal recycling industry is highly competitive and, as
3 in the case of all commodities, the cost of different categories of scrap metal fluctuates depending
4 on a variety of market factors. Typically, Plaintiffs enter into supply contracts with their
5 customers (e.g., steel mills and smelters), with future delivery dates, and then purchase the scrap
6 metal that is needed to fill these orders. Failure to fulfill these contractual obligations can expose
7 Plaintiffs to liquidated damages and other contractual penalties. Scrap metal is collected from
8 thousands of sources, sorted, de-polluted, as necessary, and transported to metal shredding
9 facilities for further processing. The finished products produced by Plaintiffs' facilities trade on
10 the global commodities market and are subject to similar fluctuations in price.

35. In order for Plaintiffs' operations to remain profitable, their total expenses (e.g., the amount paid for incoming scrap metal plus processing costs, salaries, taxes, equipment, maintenance, utilities, regulatory compliance costs, etc.) necessarily must be less than the amount obtained through the sale of their final products. If this balance is disrupted—for example, through the imposition of costly, unlawful and unnecessary permit requirements—the business would likely become unprofitable and will eventually fail if profitability cannot be restored. Plaintiffs are informed and believe, and on that basis allege, that the costs of complying with Defendant's threatened regulatory regime for metal processing operations, *i.e.*, as permitted hazardous waste treatment facilities, would pose severe threats to the economic viability of these facilities and increase the likelihood of facility closures or departures from the state.

21 36. Plaintiffs are informed and believe, and on that basis allege, that approximately
22 8,100 people are directly employed in the scrap metal recycling industry in California. These are
23 high quality, well-paying jobs with substantial benefits and opportunities for advancement.
24 Plaintiffs' facilities also support a huge network of suppliers, many of whom are small, often
25 minority-owned businesses engaged in the collection of scrap metal from thousands of sources.
26 Collectively, these suppliers sell millions of tons of scrap metal per year to metal shredding
27 facilities. Other suppliers of services to the industry include transportation companies.

1 engineering firms, accounting and other professional service firms, assayers and analytical
2 laboratories, employment agencies, electricians and plumbers, facility maintenance services,
3 construction contractors, environmental consultants and many others. The number of supplier
4 and induced jobs attributable to scrap metal recycling in California is estimated to exceed 17,000.
5 The direct economic output of the scrap metal recycling industry in California is currently
6 estimated at \$2 Billion annually, including \$795 Million paid in federal, state and local taxes.
7 When supplier and other induced impacts are taken into consideration, the economic impact more
8 than doubles to \$5.4 Billion annually. The shut-down or curtailment of metal shredding
9 operations in the state would have significant adverse effects throughout many sectors of the
10 economy.

11 37. The recycling and beneficial use of scrap metal reduces the need to mine virgin
12 ores, saves large amounts of energy, and provides tangible benefits to public health, safety and
13 the environment by ensuring that scrap metal is managed safely and in an environmentally
14 responsible manner. Plaintiffs' facilities also allow the millions of tons of scrap metal that are
15 produced annually in California to be managed in the state, without placing a burden on
16 neighboring states. Though not at issue in this case, Plaintiffs employ other recycling techniques
17 (e.g., baling and shearing) to process other types and grades of scrap metal that cannot be, or that
18 do not need to be, processed by a shredder. If Plaintiffs' metal shredding facilities were no longer
19 economical, these ancillary scrap metal recycling operations that are conducted at shredding
20 facilities would also likely be suspended or interrupted, with attendant adverse consequences.

21 Description of the Shredding Process

22 38. Shredders are large electric hammermills or similar devices that utilize a shredding
23 technique to reduce scrap metal to fist-sized and smaller pieces that can be processed by
24 "downstream" separation equipment. The shredding process is strictly physical in nature and
25 does not involve the use or addition of any hazardous materials. Incoming scrap metal (shredder
26 feedstock) is staged in piles near the shredder and is placed onto an infeed conveyor by a large
27 grapple. The material enters the shredder where it is pulverized into a highly heterogeneous

mixture of ferrous metal (i.e., metal containing iron), non-ferrous metals (e.g., copper, aluminum and zinc), and nonmetallic materials that are naturally present in the feedstock (e.g., shredded upholstery, cloth, carpet, rubber, glass, vinyl, and plastic). This mixture, referred to as “shredder output,” exits the shredder and is conveyed to a large rotating drum magnet that removes the ferrous metal. The ferrous metal is conveyed by stacking conveyor into large stockpiles, where it is stored pending sale and shipment off-site, typically by ocean-going ships. Plaintiffs’ facilities have been in operation since before Defendant existed as an agency, and Defendant has not, since its inception, ever attempted to regulate the removal of ferrous metal from the mixture of material exiting the shredder as treatment of a hazardous waste.

39. The mixture that remains after ferrous metal has been removed is known in the industry as "aggregate" or "non-ferrous raw." This material—which still contains all of the valuable non-ferrous metals—is conveyed by conveyor or other heavy equipment to a downstream non-ferrous metal separation plant where it is processed by a variety of sophisticated, proprietary technologies that mechanically separate the non-ferrous metals into a range of different metal commodities, depending on the type, grade and size of the metal. Most non-ferrous metal separation plants are co-located at metal shredding facilities. Where shredding and non-ferrous metal separation operations are conducted in different locations, the aggregate is transported by truck to the non-ferrous plant. Aggregate is an in-process, intermediate material that is the sole feedstock to the downstream non-ferrous metal separation plant. This material is not a waste. Defendant has not, since its inception, ever attempted to regulate the removal of non-ferrous metals from aggregate as treatment of a hazardous waste or otherwise subjected this material to regulation as hazardous waste.

40. The material that remains after ferrous and non-ferrous metals have been removed is known as metal shredder residue ("MSR"). Defendant has historically taken the position that MSR is not generated until *after* the material has been chemically stabilized and has undergone a final screening step to remove remaining metal. Only at that point is the material considered "exhausted" and thus a waste. In accordance with OPP #88-6, the chemical stabilization of MSR

1 has been determined by DTSC to be part of the metal processing operation. As such, Defendant
2 has not previously required Plaintiffs to obtain hazardous waste permits for the MSR treatment
3 process. Plaintiffs do not dispute Defendant's jurisdiction over MSR at the point this material is
4 designated as a waste.

5 41. Plaintiffs are informed and believe, and on that basis allege, that metal shredding
6 facilities are not regulated as hazardous waste treatment facilities in any other state. Similarly,
7 metal shredding facilities are not federally regulated as hazardous waste treatment facilities under
8 RCRA. Defendant's *ultra vires* actions will place Plaintiffs at a significant competitive
9 disadvantage relative to out-of-state metal shredding facilities that do not have to bear the
10 economic and regulatory burden of complying with hazardous waste management regulations or
11 the stigma, and associated commercial consequences, of selling products that are viewed by
12 customers as being derived from the treatment of hazardous waste.

13 42. Each of Plaintiffs' facilities is located in a local industrial zoning district that does
14 not expressly recognize hazardous waste treatment facilities as a permitted land use. Plaintiffs are
15 informed and believe, and on that basis allege, that if their metal processing operations were
16 subject to hazardous waste permit requirements, the facilities' status under local zoning
17 ordinances or other land use approvals (e.g., leases) would be jeopardized, causing them to be
18 classified as nonpermitted or non-conforming uses. As a consequence, Plaintiffs' facilities would
19 be subject to significant restrictions on future modifications and expansions, new local permitting
20 requirements, fees and assessments, and possible termination/nonrenewal of their leases and
21 phase-out over time, all of which will interfere severely with Plaintiffs' ability to conduct their
22 lawful operations.¹¹

23
24
25 ¹¹ Plaintiffs acknowledge that DTSC has authority under the HWCL to require Plaintiffs to obtain
26 a permit or other form of authorization for treatment of metal shredder residue once it is a
27 waste. Significantly, under Health and Safety Code section 25201.3, authorization issued under
28 DTSC's tiered permitting program, such as a Permit-by-Rule pursuant to Section 67450.1, *et*
seq. of the Title 22 regulations, does not constitute a "land use decision" and thus would not
adversely affect the facilities' status under local zoning ordinances.

1 **EXISTING STATUTORY AND REGULATORY FRAMEWORK**

2 43. Under the HWCL, DTSC's jurisdiction is limited to "hazardous wastes." In order
3 to be considered a "hazardous waste," a material must in the first instance be defined as a
4 "waste." By law, materials that are not "wastes" cannot be "hazardous waste" and therefore are
5 not subject to regulation by DTSC, regardless of their chemical characteristics.

6 44. Under the HWCL, a "waste" is defined as a "discarded material that is not
7 excluded by this chapter or by regulations adopted pursuant to this chapter." Health & Saf. Code,
8 § 25124(a). Neither the raw materials (scrap metals) that are introduced into the shredder, nor
9 the heterogeneous mixture that is produced by the metal shredding process to facilitate the
10 separation and removal of valuable ferrous and non-ferrous metal commodities, are discarded
11 materials. The scrap metal feedstock is purchased by Plaintiffs through a network of large and
12 small suppliers who trade in these valuable materials. These materials are collected, sorted and
13 sold to Plaintiffs, for valuable consideration, and are prevented from becoming part of the "rising
14 tide" of waste that is addressed by the laws applicable to solid and hazardous waste. See, *Waste*
15 *Management of the Desert, Inc. v. Palm Springs Recycling Center, Inc.* (1994) 7 Cal. 4th 478.
16 The fact that scrap metal items may have reached the end of their useful lives from the
17 perspective of the original purchaser or user does not mean they have been "discarded" under the
18 HWCL. See also, *West Coast Chapter of the Institute of Scrap Recycling Industries v. Scott*
19 *Smithline, et al.* (Sac. County Sup. Ct. Case No. 34-2019-00257463, ruling dated August 14, 2019
20 [holding that scrap metal is not a "solid waste" under the Integrated Waste Management Act and
21 issuing a preliminary injunction against application of the statute to such materials]).

22 45. Plaintiffs acknowledge that under Health and Safety Code, section 25124(b), the
23 term "discarded material" includes materials that are "recycled, or accumulated, stored, or treated
24 before recycling, except as provided in Section 25143.2." By its own terms, subdivision (b) of
25 section 25124 must be read in conjunction with subdivision (a) which applies, in the first
26 instance, only to those discarded materials "that [are] not excluded by this this chapter or by
27 regulations adopted pursuant to this chapter." Health & Saf. Code, § 25143.2 (Emphasis

1 added.) The regulations adopted by Defendant pursuant to the HWCL expressly provide that
2 scrap metal that is recycled is "not subject to regulation under this division." 22 CCR,
3 §§ 66260.10, 66261.6(a)(3)(B). Accordingly, the "recycling" prong of the definition of
4 "discarded material" has no application to the scrap metal processed by Plaintiffs' metal
5 shredding facilities. Scrap metal that is being recycled is exempt from regulation under the
6 HWCL and is not a regulated "recyclable material." 22 CCR, § 66261.6(a)(3)(B).

7 46. Defendant concedes that the scrap metal introduced *into* Plaintiffs' metal shredders
8 is exempt from regulation as hazardous waste but claims the metal-rich material *exiting* the
9 shredder is not exempt. This distinction is incongruous and is not supported by any provision of
10 law.

11 47. In fact, other provisions of the HWCL confirm that the shredded materials
12 processed in Plaintiffs' metal processing operations are not "wastes" but instead fall squarely
13 within a category of useful materials known as "intermediate manufacturing process streams."
14 Health & Saf. Code, § 25116.5. In short, these are materials that are produced as part of a
15 manufacturing process and that are used on a batch or continuous basis, in either the same or a
16 different manufacturing process, to produce a commercial product. Section 25116.5 was added to
17 the HWCL in 1996 in order to prevent Defendant from inappropriately expanding its hazardous
18 waste permitting authority to include manufacturing operations—the very conduct Defendant is
19 engaged in here. Stats. 1996, c. 579 (A.B. 2088). By law, intermediate manufacturing process
20 streams are not "discarded materials" and thus not "wastes." Health & Saf. Code, § 25124(c).

21 48. Defendant contends that the metal-rich mixture of materials that are produced by
22 the shredder do not qualify as "intermediate manufacturing process streams" because they are
23 "recyclable materials" which are excluded from the definition of "intermediate manufacturing
24 process stream." See, Health & Saf. Code, § 25116.5(a)(3). As noted in Paragraph 45, scrap
25 metal that is being recycled is exempt from regulation under the HWCL and is not a regulated
26 "recyclable material."

49. Moreover, the materials processed by Plaintiffs' metal processing operations do not fall within the statutory definition of "recyclable material," irrespective of the scrap metal exemption. "Recyclable material" is defined in Section 25120.5 of the Health and Safety Code to mean "a hazardous waste that is capable of being recycled." (Emphasis added.) The statute provides examples of secondary materials that fall within this definition, namely residues, spent materials, materials that are so contaminated that they can no longer be used for the purpose for which they were originally purchased or manufactured, byproducts and retrograde materials. The metal-rich materials produced by the shredding process bear no similarity to any of these categories of secondary materials.

50. Plaintiffs' position is also confirmed by DTSC Official Policy/Procedure #88-6 which expressly provides that the mixture of materials exiting a metal shredder is an in-process material that is not subject to regulation as a "waste" until after the material has been "exhausted." i.e., all ferrous and non-ferrous metals have been removed. OPP #88-6 is consistent with Health and Safety Code, section 25116.5 and the definition of "intermediate manufacturing process stream."

51. As noted above, Defendant concedes that the scrap metal introduced *into* Plaintiffs' metal shredders is expressly exempt from regulation as hazardous waste but contends that the material *exiting* the shredder is not exempt. Plaintiffs assert that the scrap metal exemption applies throughout the duration of metal processing operations, and that none of the regulatory exceptions to the scrap metal exemption is applicable in the circumstances.

52. There is no provision of the HWCL or the Title 22 regulations that authorizes DTSC to regulate metal processing operations that utilize exempt scrap metal as feedstock. To the contrary, the scrap metal exemption refers expressly to scrap metal that “is being recycled.” The types of scrap metals processed by Plaintiff’s shredders cannot economically be recycled unless they are first shredded and then processed by the “downstream” metal separation and removal processes employed by Plaintiffs. These processing steps are necessary to produce distinct metal commodities that are traded on the global metals market and used as raw materials

1 in other manufacturing processes. Defendant's assertion that the scrap metal exemption is no
2 longer applicable once the scrap metal has been converted into a form that allows the different
3 types and grades of metal to be sorted and separated is without legal basis and would render the
4 scrap metal exemption meaningless.

5 53. Finally, even if shredder output and aggregate were presumed, initially, to be
6 secondary "recyclable materials" rather than in-process materials, they would nevertheless be
7 excluded from classification as "waste" under Health and Safety Code, section 25143.2. This
8 section of the HWCL provides that recyclable materials "shall be excluded from classification as
9 a waste" if they can be shown to be recycled in certain ways, several of which would encompass
10 Plaintiffs' metal processing operations. The pertinent exclusions are contained in Section
11 25143.2(d), applicable to materials—such as shredder output and aggregate—that are *not*
12 regulated under RCRA. The prohibition against "prior reclamation" applicable to materials
13 recycled under Section 25143.2(b) is not applicable in the case of non-RCRA materials that
14 qualify for exclusion under subdivision (d).¹²

15 54. Under Health and Safety Code, section 25143.2(d)(1), materials that are recycled
16 and used at the same facility at which the material was generated are excluded from classification
17 as "waste." The shredder output and aggregate produced at SA Recycling's, Schnitzer Steel's
18 and Sims' facilities are generated and recycled (used) on-site to produce the ferrous and non-
19 ferrous metal commodities sold by Plaintiffs. Both of these in-process streams qualify for
20 exclusion under Section 25143.2(d)(1).

21 55. Plaintiff Ecology recycles its shredder output on-site through ferrous metal
22 removal equipment and is also eligible for exclusion under subsection (d)(1). However, the
23 aggregate that remains after ferrous removal is transported by Ecology to its facility in Arizona
24 for non-ferrous metal processing as thus does not qualify for the on-site recycling exclusion under
25 subsection (d)(1). Defendant has acknowledged in writing that the aggregate produced by

26 ¹² Materials that would be regulated under RCRA (but for the fact they are recycled) are eligible
27 for exclusion only under Section 25143.2(b) and are subject to a prohibition against "prior
28 reclamation."

1 Plaintiff Ecology is excluded under Health and Safety Code, section 25143.2(d)(4), applicable to
2 materials that are recycled off-site at a location owned by the same company. Ecology maintains
3 that reliance on the exclusion in Section 25143.2(d)(4) is in fact unnecessary, given that aggregate
4 is not a waste in the first instance.

5 56. In addition to the exclusions in Health and Safety code sections 25143.2(d)(1) and
6 (d)(4), shredder output and aggregate produced by all Plaintiffs would be eligible for exclusion
7 under subsections 25143.2(d)(5) and (d)(6), which establish exclusions for materials that are used
8 or reused as ingredients in an industrial process to make a product, and materials that are used or
9 reused as a safe and effective substitute for commercial products, respectively, if the materials
10 were found to be wastes in the first instance. Neither the fact that metals are separated from these
11 in-process materials, nor the fact that some waste remains after metal processing operations are
12 completed, is disqualifying.

13 57. The HWCL specifies a number of conditions that must be met in order to "perfect"
14 these exclusions under Health and Safety Code, section 25143.2(d), all of which can be met by
15 Plaintiffs. Thus, even assuming for sake of argument that shredder output and aggregate can be
16 considered "recyclable materials" in HWCL parlance (which proposition Plaintiffs vigorously
17 dispute), both materials would meet the criteria for exclusion and are not subject to hazardous
18 waste permit requirements.

19 58. In 2014, the state Legislature enacted Senate Bill 1249, effective January 1, 2015
20 ("SB 1249"), directing Defendant DTSC to conduct an evaluation of metal shredding facilities in
21 the state and authorizing DTSC, if appropriate, to adopt regulations establishing alternative
22 management standards for "hazardous waste management activities within the department's
23 jurisdiction" conducted at metal shredding facilities. Health & Saf. Code, § 25150.82(c). In
24 defining DTSC's role in the regulation of metal shredding facilities, the Legislature was focused
25 on metal shredder residue, not on metal processing operations lying outside DTSC's jurisdiction
26 and which are already regulated by numerous other state, regional and local agencies. To the
27

1 extent that Defendant seeks to rely on SB 1249 as authority for regulating metal processing
2 operations as hazardous waste treatment, that reliance is misplaced.

3 59. SB 1249 did not expand the jurisdiction of the DTSC, as set forth in the HWCL.

4 60. SB 1249 did not modify the existing definitions of "waste," "hazardous waste,"
5 "intermediate manufacturing process stream," or "recyclable material" contained in the HWCL.

6 61. SB 1249 did not repeal or revise the scrap metal exemption contained in sections
7 66260.10 and 66261.6(a)(3)(B) of the Title 22 regulations.

8 62. SB 1249 did not modify or rescind DTSC Official Policy/Procedure #88-6.
9

10 **FIRST CAUSE OF ACTION**

11 **Declaratory Relief (Cal. Code Civ. Proc. § 1060)**

12 63. Plaintiffs re-allege and incorporate herein by reference the allegations of all
13 foregoing paragraphs.

14 64. This case presents a justiciable issue in that the Plaintiffs have previously operated
15 and continue to operate scrap metal shredding and processing facilities in accordance with
16 applicable laws and regulations, as interpreted by Defendant over the past 35-plus years.

17 65. Plaintiffs are entitled to a judicial declaration that operation of a metal shredder
18 (hammermill or other shredding device) does not require a permit or other form of authorization
19 from DTSC, and that removal of ferrous and non-ferrous metals from shredder output and
20 aggregate, respectively, does not constitute treatment of hazardous waste subject to a permit or
21 other form of authorization from DTSC.

22 66. Plaintiffs are entitled to a judicial declaration that scrap metal is exempt from
23 regulation as hazardous waste and that the following materials fall within the scope of the
24 exemption: shredder feedstock, in-process shredder output, in-process aggregate, and the ferrous
25 and non-ferrous metals produced by Plaintiffs' metal processing operations.
26
27
28

67. Allowing Defendant to implement its unlawful regulatory regime would be contrary to existing law, regulation and formal agency policy and practice that has been in effect for over 35 years without change.

68. A declaratory judgment in this matter would afford relief from the uncertainty, cost, disruption, conflict and controversy giving rise to this proceeding, and would serve to properly limit the scope of any future actions undertaken by DTSC to regulate metal shredding facilities.

SECOND CAUSE OF ACTION

(Injunctive Relief, Cal. Code Civ. Proc. § 526)

69. Plaintiffs re-allege and incorporate herein by reference the allegations of all foregoing paragraphs.

70. Plaintiffs' metal shredding and processing operations safely and effectively process the vast majority of end-of-life vehicles, appliances and light iron generated in the state. If some or all of Plaintiffs' facilities were forced to shut down or to significantly curtail their operations, the thousands of businesses in the state that rely on Plaintiffs' facilities to purchase and recycle their scrap metal would be severely impacted. In addition, local municipalities and other governmental entities would rapidly be overwhelmed by scrap metal generated by consumers and would have no outlet for those items that could be collected. While some types of scrap metal (e.g., car bodies) may begin to flow out of state or to foreign countries for recycling, large numbers of vehicles and many other items would remain in the state where they would be abandoned or pile up, creating logistical nightmares for public and private entities, contributing to public nuisance conditions, and posing risks to human health and the environment.

71. Plaintiffs' metal shredding facilities are critical parts of the state's infrastructure and enable the state to beneficially recycle the vast array of metal objects that are produced by society. Unnecessary disruption or curtailment of these vital operations would cause far-ranging adverse impacts and leave the state without adequate means of handling this material. Neither

1 Plaintiffs, their customers nor the public should be subjected to the significant environmental and
2 economic impacts that would be caused by disruption of Plaintiffs' metal recycling operations.

3 72. As a consequence of Defendant's unlawful reclassification of Plaintiffs' metal
4 processing facilities as hazardous waste treatment facilities, each of Plaintiffs' facilities could
5 become a nonpermitted or non-conforming use, subject to significant restrictions on future
6 modifications and expansions, new local permitting requirements, fees and assessments, and
7 possibly phase-out over time, all of which will interfere severely with Plaintiffs' ability to
8 conduct their lawful operations.

9 73. Even if Plaintiffs were able to overcome the land use hurdles described in
10 Paragraph 72, Plaintiffs are informed and believe, and on that basis allege, that the cost of
11 compliance with hazardous waste permit requirements and related regulations could exceed
12 several hundred thousand dollars per year, per facility. Plaintiffs could also be required to
13 substantially rebuild their facilities, at a cost of millions of dollars, in an effort to comply with
14 hazardous waste regulations. Plaintiffs have no means of passing any of these costs on to their
15 customers. Incurrence of these additional costs would threaten the economic viability of
16 Plaintiffs' metal shredding facilities and is likely to result in the shut-down and/or out-of-state
17 relocation of one or more of such facilities.

18 74. Shutdown or curtailment of Plaintiffs' legitimate metal shredding and processing
19 operations would have the undesirable result of encouraging illicit metal recyclers that operate
20 "under the radar" and without regard to applicable environmental laws. By avoiding
21 environmental regulation and the attendant costs of compliance, these facilities undercut
22 legitimate operations by offering higher prices for scrap metal, depriving legitimate recyclers of
23 critical raw materials. Plaintiffs are informed and believe, and on that basis allege, that illicit
24 recyclers operate without storm water permits, air quality permits, hazardous materials business
25 plans or permits, spill response and contingency plans, scrap acceptance policies or other
26 procedures designed to protect the environment and that apply to Plaintiffs' operations. Plaintiffs
27 are further informed and believe, and on that basis allege, that many of these illicit recyclers

1 simply load vehicles, appliances and other scrap metal into cargo containers for shipment
2 overseas, with minimal or no de-pollution. Undoubtedly, Defendant's proposed action would
3 result in a significant increase in the already large number of illicit operations.

4 75. Plaintiffs and Plaintiffs' members will suffer irreparable harm if Defendant is
5 allowed to implement its unlawful regulatory regime and is not enjoined. This harm would be
6 suffered without any offsetting environmental benefit.

7 76. Plaintiffs have no adequate remedy at law for the injuries alleged herein. Only this
8 Court's exercise of its equitable powers can protect Plaintiffs from sustaining irreparable harm.

9 77. While injunctive relief would prevent irreparable injury to Plaintiffs, any resulting
10 injury to Defendant (if any at all) would be insignificant. Defendant has allowed Plaintiffs to
11 operate their metal shredding facilities without asserting a requirement for hazardous waste
12 treatment permits since the advent of the state's hazardous waste management program and can
13 point to no change in the law that supports a contrary result. Plaintiffs' facilities are already
14 subject to numerous regulatory programs of other state, regional and local agencies, including the
15 local air quality management districts, regional water quality control boards, certified unified
16 program agencies and local fire departments. Plaintiffs work closely with these regulatory
17 agencies to address any concerns that have been raised and are inspected by them on a regular
18 basis. Plaintiffs' facilities are well managed and do not pose a threat to human health, safety or
19 the environment. Ironically, Defendant has acknowledged the continuous improvement of
20 Plaintiffs respective operations over time.

21 78. Plaintiffs do not seek to restrict DTSC's permitting or enforcement authority
22 except with respect to the metal processing operations addressed in this Complaint. Defendant's
23 authority to regulate other aspects of Plaintiffs' operations that are legitimately within its
24 jurisdiction (e.g., the chemical treatment of metal shredder residue) would not be compromised
25 by the Court's granting the requested injunctive relief.

26 79. The public interest would also be served by injunctive relief because unilateral
27 imposition of the new, unlawful regulatory regime crafted by the Defendant, without input from
28

1 Plaintiffs or any other members of the metal shredding industry, would come at a collective cost
2 of thousands of direct and indirect jobs and many millions of dollars in taxes, goods and services
3 to the State and local governments. The resulting loss of jobs would cause extreme financial
4 hardship to the affected individuals and would propagate serious effects throughout the local and
5 state economy. On a statewide basis, total economic losses could exceed hundreds of millions of
6 dollars.

7
8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiffs pray for entry of judgment as follows:

10 80. For a judicial declaration with respect to each of the following:

- 11 a. that operation of a metal shredder (hammermill or other shredding device) does
12 not require a permit or other form of authorization from DTSC;
13 b. that metal processing operations do not constitute treatment of hazardous waste
14 and do not require a permit or other form of authorization from DTSC;
15 c. that the scrap metal exemption set forth in Section 66261.6(a)(3)(B) of Title 22
16 of the California Code of Regulations applies during metal processing
17 operations; and
18 d. that none of the following materials are subject to regulation as hazardous
19 waste: shredder feedstock, shredder output, aggregate, and ferrous and non-
20 ferrous metals that are produced by metal processing operations;

21 81. For an injunction barring Defendant from requiring Plaintiffs to apply for
22 hazardous waste treatment permits for their metal processing operations or otherwise requiring
23 Plaintiffs to comply with hazardous waste regulations with respect to such operations, and barring
24 Defendant from taking enforcement action of any kind against Plaintiffs which presumes that
25 Plaintiffs' metal processing operations are subject to hazardous waste treatment permit
26 requirements;

27 82. For costs of suit;

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Margaret Rosegay #96963 Pillsbury Winthrop Shaw Pittman LL Four Embarcadero Center 22nd Floor San Francisco, CA 94111-5998 TELEPHONE NO.: (415) 983-1000 FAX NO.: (415) 983-1200 ATTORNEY FOR (Name): Plaintiffs		FOR COURT USE ONLY FILED Superior Court Of California, Sacramento 11/26/2019 skhorn1 By _____, Deputy Case Number: 24-2019-00269900
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO STREET ADDRESS: 720 9th Street MAILING ADDRESS: CITY AND ZIP CODE: Sacramento, 95814 BRANCH NAME: Gordon D. Schaber Sacramento County Courthouse		
CASE NAME: West Coast Chapter, et al. v. CA Dept. of Toxic Substances Control, et al		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less) Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)		
JUDGE: DEPT:		

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PIP/DWD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PIP/DWD (23) Non-PIP/DWD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PIP/DWD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input checked="" type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
--	--	--

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. ☐ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (specify): (1) Declaratory Relief and (2) Injunctive Relief
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: November 26, 2019
 Mark E. Elliott

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 8 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (48) (If the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)

Other PIPD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (not asbestos or toxic/environmental) (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other PIPD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PIPD/WD

Non-PIP/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (not medical or legal)
Other Non-PIP/WD Tort (35)
Employment
Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease Contract (not unlawful detainer or wrongful eviction)
Contract/Warranty Breach—Seller Plaintiff (not fraud or negligence)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (not provisionally complex) (18)
Auto Subrogation
Other Coverage

Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (not eminent domain, landlord/tenant, or foreclosure)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (If the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (arising from provisionally complex case type listed above) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (non-domestic relations)
Sister State Judgment
Administrative Agency Award (not unpaid taxes)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint RICO (27)

Other Complaint (not specified above) (42)
Declaratory Relief Only
Injunctive Relief Only (non-harassment)
Mechanics Lien
Other Commercial Complaint Case (non-tort/non-complex)
Other Civil Complaint (non-tort/non-complex)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (not specified above) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

SHORT TITLE: West Coast Chapter, et al. v. CA Dept. of Toxic Substances Control	CASE NUMBER:
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ATTACHMENT (Number): A*(This Attachment may be used with any Judicial Council form.)*

ADD'L COUNSEL INFORMATION:

Pillsbury Winthrop Shaw Pittman LLP
Mark E. Elliott #157759
725 S. Figueroa Street, Suite 2800
Los Angeles, CA 90017
Telephone: (213) 488-7511
Facsimile: (213) 629-1033
Email: mark.elliott@pillsburylaw.com

Attorneys for Plaintiffs,
West Coast Chapter, Institute of Scrap Recycling Industries, Inc.;
Ecology Recycling Services, LLC; SA Recycling, LLC;
Schnitzer Steel Industries, Inc.; and Sims Group USA Corporation

(If the item that this Attachment concerns is made under penalty of perjury, all statements in this Attachment are made under penalty of perjury.)

Page 1 of 1*(Add pages as required)*

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO STREET ADDRESS: 720 Ninth STREET MAILING ADDRESS: 720 Ninth STREET CITY AND ZIP CODE: Sacramento, CA 95814-1311 BRANCH NAME: Gordon D Schaber Courthouse PHONE NUMBER: (916) 874-6522	FOR COURT USE ONLY
SHORT TITLE: West Coast Chapter, Institute of Scrap Recycling Indust	
NOTICE OF CASE MANAGEMENT CONFERENCE AND ORDER TO APPEAR	CASE NUMBER: 34-2019-00289900-CU-MC-GDS

Hearing Date

The above entitled action has been set for a case management conference at 08:30 AM on 05/28/2020 in Department 39 in accordance with California Rules of Court 212. You must be familiar with the case and fully prepared to participate effectively in the case management conference.

Case Management Statement

All parties must file and serve a case management statement at least 15 calendar days before the case management conference. Parties are encouraged to file a single joint case management statement.

Minimum Requirements

Prior to the filing of the case management statement, the parties should have done the following:

- Served all parties named in the complaint within 60 days after the summons has been issued
- Ensured that all defendants and cross-defendants have answered, been dismissed, or had their defaults entered
- Met and conferred with all parties as required by CRC 212 (f) to discuss and resolve issues set forth therein.

Tentative Ruling

Following its review of the case management statement(s), the court may determine that a case management conference is not necessary.

To determine whether an appearance is required, the parties must check the court's tentative rulings after 2:00 p.m. on the Court day before the Thursday calendar by accessing the court's internet website at

www.saccourt.ca.gov

Case Management Orders

At the case management conference, the court will consider whether the case should be ordered to judicial arbitration or referred to other forms of Alternative Dispute Resolution. Whether or not a case management conference is held, the court will issue a case management order shortly after the scheduled conference date.

Service of Case Management Notice

Unless otherwise ordered by the court, plaintiff shall serve a copy of this notice on any party to the complaint appearing after the court issued this notice. The cross-complainant shall have the same obligation with respect to the cross-complaint.

Certification Filed in Lieu of Case Management Statement

If parties in the action file a certification on a form provided by the court at least 15 calendar days prior to the date of the case management conference that the case is short cause (five hours or less of trial time), that the pleading stage is complete and that the case will be ready for trial within 60 days, the case will be exempted from any further case management requirements and will be set for trial within 60-120 days. The certification shall be filed in lieu of a case management statement.

Compliance

Failure to comply with this notice or to appear at the case management conference may result in the imposition of sanctions (including dismissal of the case, striking of the answer, or payment of money).

Continuances

Case management conference will not be continued except on a showing of good cause. If your case management conference is continued on motion or by the court on its own motion all parties shall file and serve a new case management statement at least 15 calendar days before the continued case management conference.

Dated: 11/26/2019

David W. Abbott

David W. Abbott, Judge of the Superior Court

By Fax

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Margaret Rosegay #96963 Pillsbury Winthrop Shaw Pittman LLP Four Embarcadero Center, 22nd Floor San Francisco, CA 94111-5998 TELEPHONE NO.: (415) 983-1000 FAX NO. (Optional): (415) 983-1200 E-MAIL ADDRESS (Optional): margaret.rosegay@pillsburylaw.com ATTORNEY FOR (Name): Plaintiffs		SEE ATTACHMENT A FOR ADD'L COUNSEL		FILED FOR COURT USE ONLY Superior Court Of California, Sacramento 11/26/2019 skhorn1 By _____, Deputy Case Number: 34-2019-00269900
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Sacramento STREET ADDRESS: 720 9th Street MAILING ADDRESS: CITY AND ZIP CODE: Sacramento, CA 95814 BRANCH NAME: Gordon D. Schaber Sacramento County Courthouse				
PLAINTIFF/PETITIONER: West Coast Ch., Institute of Scrap Recycling DEFENDANT/RESPONDENT: CA Department of Toxic Substances Control		CASE NUMBER: JUDICIAL OFFICER: DEPT.:		
NOTICE OF RELATED CASE				

Identify, in chronological order according to date of filing, all cases related to the case referenced above.

1. a. Title: West Coast Ch. of the Institute of Scrap Recycling Industries v. Scott Smithline, et al.
 b. Case number: 34-2019-00257463
 c. Court: ☒ same as above
☐ other state or federal court (name and address):
 d. Department: 53
 e. Case type: ☐ limited civil ☒ unlimited civil ☐ probate ☐ family law ☐ other (specify):
 f. Filing date: May 30, 2019
 g. Has this case been designated or determined as "complex?" ☐ Yes ☒ No
 h. Relationship of this case to the case referenced above (check all that apply):
☒ involves the same parties and is based on the same or similar claims.
☒ arises from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact.
☐ involves claims against, title to, possession of, or damages to the same property.
☒ is likely for other reasons to require substantial duplication of judicial resources if heard by different judges.
☐ Additional explanation is attached in attachment 1h
 i. Status of case:
☒ pending
☐ dismissed ☐ with ☐ without prejudice
☐ disposed of by judgment
2. a. Title:
 b. Case number:
 c. Court: ☐ same as above
☐ other state or federal court (name and address):
 d. Department:

PLAINTIFF/PETITIONER: West Coast Ch., Institute of Scrap Recycling	CASE NUMBER:
DEFENDANT/RESPONDENT: CA Department of Toxic Substances Control	

2. (continued)

- e. Case type: ☐ limited civil ☐ unlimited civil ☐ probate ☐ family law ☐ other (specify):
- f. Filing date:
- g. Has this case been designated or determined as "complex?" ☐ Yes ☐ No
- h. Relationship of this case to the case referenced above (check all that apply):
- ☐ involves the same parties and is based on the same or similar claims.
- ☐ arises from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact.
- ☐ involves claims against, title to, possession of, or damages to the same property.
- ☐ is likely for other reasons to require substantial duplication of judicial resources if heard by different judges.
- ☐ Additional explanation is attached in attachment 2h
- i. Status of case:
- ☐ pending
- ☐ dismissed ☐ with ☐ without prejudice
- ☐ disposed of by judgment

3. a. Title:

b. Case number:

c. Court: ☐ same as above☐ other state or federal court (name and address):

d. Department:

e. Case type: ☐ limited civil ☐ unlimited civil ☐ probate ☐ family law ☐ other (specify):

f. Filing date:

g. Has this case been designated or determined as "complex?" ☐ Yes ☐ No

h. Relationship of this case to the case referenced above (check all that apply):

- ☐ involves the same parties and is based on the same or similar claims.
- ☐ arises from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact.
- ☐ involves claims against, title to, possession of, or damages to the same property.
- ☐ is likely for other reasons to require substantial duplication of judicial resources if heard by different judges.
- ☐ Additional explanation is attached in attachment 3h

i. Status of case:

- ☐ pending
- ☐ dismissed ☐ with ☐ without prejudice
- ☐ disposed of by judgment

4. ☐ Additional related cases are described in Attachment 4. Number of pages attached: _____

Date: November 26, 2019

Mark E. Elliott

(TYPE OR PRINT NAME OF PARTY OR ATTORNEY)

(SIGNATURE OF PARTY OR ATTORNEY)

SHORT TITLE:

West Coast Chapter, et al v. CA Dept. of Toxic Substances Control

CASE NUMBER:

ATTACHMENT (Number): A

(This Attachment may be used with any Judicial Council form.)

ADD'L COUNSEL INFORMATION:

Pillsbury Winthrop Shaw Pittman LLP
Mark E. Elliott #157759
725 S. Figueroa Street, Suite 2800
Los Angeles, CA 90017
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Facsimile: (213) 629-1033
Email: mark.elliott@pillsburylaw.com

Attorneys for Plaintiffs,
West Coast Chapter, Institute of Scrap Recycling Industries, Inc.;
Ecology Recycling Services, LLC; SA Recycling, LLC;
Schnitzer Steel Industries, Inc.; and Sims Group USA Corporation

(If the item that this Attachment concerns is made under penalty of perjury, all statements in this Attachment are made under penalty of perjury.)

Page 1 of 1

(Add pages as required)

PLAINTIFF/PETITIONER: West Coast Ch., Institute of Scrap Recycling
 DEFENDANT/RESPONDENT: CA Department of Toxic Substances Control

CASE NUMBER:

**PROOF OF SERVICE BY FIRST-CLASS MAIL
 NOTICE OF RELATED CASE**

(NOTE: You cannot serve the Notice of Related Case if you are a party in the action. The person who served the notice must complete this proof of service. The notice must be served on all known parties in each related action or proceeding.)

1. I am at least 18 years old and not a party to this action. I am a resident of or employed in the county where the mailing took place, and my residence or business address is (specify):

Pillsbury Winthrop Shaw Pittman LLP
 725 S. Figueroa Street, Suite 2800, Los Angeles, CA 90017

2. I served a copy of the *Notice of Related Case* by enclosing it in a sealed envelope with first-class postage fully prepaid and (check one):
- a. ☐ deposited the sealed envelope with the United States Postal Service.
 - b. ☒ placed the sealed envelope for collection and processing for mailing, following this business's usual practices, with which I am readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.
3. The *Notice of Related Case* was mailed:
- a. on (date): November 26, 2019
 - b. from (city and state): Los Angeles, CA
4. The envelope was addressed and mailed as follows:
- a. Name of person served:
 Frank E. Merideth, Jr., Greenberg Traurig
 Street address: 1840 Century Park East, 19 Fl
 City: Los Angeles, CA 90067
 State and zip code: CA 90067
 - c. Name of person served:
 William L. Gausewitz, Greenberg Traurig, LLP
 Street address: 1201 K Street, Ste. 1100
 City: Sacramento
 State and zip code:
 - b. Name of person served:
 Todd A. Pickles, Greenberg Traurig, LLP
 Street address: 1201 K Street, Ste. 1100
 City: Sacramento
 State and zip code: CA 95814
 - d. Name of person served:
 Deepi K. Miller, Greenberg Traurig, LLP
 Street address: 1201 K Street, Ste. 1100
 City: Sacramento
 State and zip code: CA 95814

☐ Names and addresses of additional persons served are attached. (You may use form POS-030(P).)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: November 26, 2019

Helen Moreno

(TYPE OR PRINT NAME OF DECLARANT)

(SIGNATURE OF DECLARANT)